IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1691 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
DHRAMRAJ BHANUSHANKAR DAVE & ORS

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Appearance :
MR KC SHAH APP for Appellant
MR TUSHAR MEHTA for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date :30/10/2007

CAV JUDGMENT (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Leave to Appeal granted. Appeal is Admitted. Learned Advocate Mr. Tushar Mehta waives for all the respondents.

2 Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, against the judgment and Order dated 19th of November, 2004, delivered by learned Additional Sessions Judge, Fast Track Court No. 5, Jamnagar, in Sessions Case No. 82 of 2001, whereby all the respondents herein, were accused of the said Sessions Case. Original accused No.5 Vijay Laxmanbhai Parmar, being juvenile, was sent to Juvenile Court, while accused Nos. 1, 2, 3 and 4, present respondents came to be acquitted by the Trial Court, vide judgment and order impugned in this Appeal, for the charges levelled against them under Sections 120-B, 201, 302, 364, 404 to read with Section 34 of the Indian Penal Code and under Section 135 (1) of the Bombay Police Act.

3 Learned APP Mr. K.C. Shah for the appellant State and learned Advocate Mr. Tushar Mehta for respondents requested this Court to hear the Appeal finally at this stage as the Record and Proceedings of the Trial Court is available with this Court and that they would provide extra copies of the evidence recorded during

the trial as well as the copies of the documents produced before the Trial Court. In the facts and circumstances of the matter, request is granted and the matter is heard finally.

4 Prosecution case briefly stated deceased in this case is one Gajendrasinh Balvantsinh Rana happened to be friend of accused No.1 Dharmraj Bhanushankar Dave. All the four respondents were residents of Jamnagar and were friends. The dispute had arisen between the deceased and respondents in respect of one Santro Car, and on account of that, according to prosecution case, deceased Gajendrasinh was threatening respondents and was extorting money and, therefore, all these respondents being friends, joined together, to do something about this. On 2nd of March, 2001, all the respondents decided to kill deceased Gajendrasinh. One of the respondents had called Gajendrasinh telephonically from his house on 2nd of March, 2001, but deceased Gajendrasinh did not turn up. Therefore, on 3rd of March, 2001, at about 8.15, deceased was called by accused near Mahila College by telephonic message. All the respondents got together in one Qualis car bearing Regn. No. GJ-10-F 9654 belonged to father of respondent No.1. The deceased came on his own motor cycle near Mahila College and parked his motor cycle there. The deceased was made to sit in the said Qualis car and the respondents had concealed the weapons in the said Qualis car like iron rod, sword, small knife, etc. The respondents had removed

number plate of the car. Respondents and deceased thereafter through the city of Jamnagar, went near Ranjit Sagar Dam and descended from the car. Thereafter, all the respondents attacked deceased with iron rod, sword, knife, etc and inflicted serious injuries, due to which, deceased died on the spot. According to prosecution case, respondents thereafter dragged deceased and loaded his body in Qualis car and thereafter the dead body was taken to Sapada Dam, and behind thick bushes, the dead body was thrown. Respondents poured kerosene and petrol on dead body and was ignited and in the said condition, all the respondents returned to Jamnagar and accused No.4 took the car to his house and washed it because the car contained bloodstains. The complaint was lodged by one Maumaiybhai Chanabhai before Police. According to him while he was near Sapada Dam with one Dilipsinh on 3rd of March, 2001, at about 10.00 a.m., they noticed one white colour car appearing like Tata Sumo car, came from Jamnagar in excessive speed and went near thick bushes. After about 20 minutes, the said car was returned towards Jamnagar. When complainant looked behind bushes, he noticed that there was thick black smoke coming out behind the bush. He informed his brother-in-law Vajibhai Rukhadbhai to run and note the number of the car, but the driver of the car was in speed and Vajibhai Rukhadbhai could not note the number of the car. Thereafter, three other boys residing in near vicinity, named as, Ramaiya Kana Charan, Luna Parbhat Charan and Sakhraj Kama Charan met

the complainant and they informed complainant that one dead body was burning behind the bushes. When complainant and Dilipsinh visited the said place, they found that a dead body was burning. The complainant went to village Sapada and conveyed this incident to the Vice President of panchayat, who informed police before `A' Division Police Station and the Police Inspector Mr. Vadher and his team visited the place and draw panchnama at about 13.30 hours to 15.30 hours including inquest panchnama. The dead body had injuries. The complaint was, therefore, recorded. From the description of car, Police investigated and inquired from RTO and came to know that father of respondent No.1 was owning one white colour Qualis car and, therefore, investigation was headed on that line. During investigation, it was also found that near Mahila College, some witnesses had seen the deceased boarding in the Qualis car along with respondents. Motor cycle parked near Mahila College was attached by the Police, which was turned out to be of the deceased. It was inquired from the father of the deceased and it was ascertained that deceased had been out of their house on 3rd of March, 2001 and had not returned from 4th of March, 2001. Therefore, the dead body which was recovered from near Sapada Dam was shown to the father of the deceased and he identified the deceased. A crime came to be registered as Crime Register No. I-27 of 2001 in the Panchkoshi `A' Division Police Station, Jamnagar and thereafter it was transferred to `B' Division Police Station, Jamnagar and was registered as Crime Register No.

I-207 of 2001 on 29th of April, 2001. According to the police, accused No.1 was arrested on 5th of March, 2001, accused No.2 was arrested on the same day; accused No.3 and accused No.4 were also arrested on 5th of March, 2001. Accused No.5 Vijay Laxmanbhai Parmar, Juvenile offender, was arrested on 6th of March, 2001. It was also found that when Gajendrasinh Balvantsinh Rana went out of his house on 3rd of March, 2001 he was wearing golden chain and tiger nail and other ornaments and during the investigation, according to police, these ornaments were recovered from the respondents. A charge sheet came to be filed at the end of investigation against five respondents, in the Court of learned JMFC, Jamnagar, and was registered as Criminal Case No. 2050 of 2001. The case thereafter was committed to the Court of Sessions and was registered as Sessions Case No. 82 of 2001. The above Sessions Case was thereafter ultimately made over to learned Additional Sessions Judge and Fast Track Court No.5 at Jamnagar and the learned Trial Judge in detail framed charges against all the four accused vide Exhibit – 37 on 16th of June, 2004. Accused No.5, as afore stated, was sent of Juvenile Court. Accused pleaded not guilty and, therefore, they were put to trial. Prosecution examined as many as 65 witnesses as under :

PW-1	Hemantsinh Gagubha Jadeja	Exh. 59
PW-2	Pravin Vashrambhai	Exh. 60
PW-3	Satubha Narubha	Exh. 61
PW-4	Jitesh Prabhujibhai Chavda	Exh. 62

PW-5	Nitinkumar Dhanjibhai	Exh. 63
PW-6	Hira Parbat	Exh. 64
PW-7	Kana Kara	Exh. 65
PW-8	Iqbal Umarbhai Nayak	Exh. 66
PW-9	Mahebub Sadiq	Exh. 67
PW-10	Kishorsinh Bahadursinh	Exh. 69
PW-11	Lakhabhai Danabhai	Exh. 70
PW-12	Raghuvirsinh Navalsinh	Exh. 71
PW-13	Nathubhai Hirabhai	Exh. 72
PW-14	Digvijaysinhji Lalsinh	Exh. 73
PW-15	Vijaysinh Kanubha Chavda	Exh. 74
PW-16	Dolatram Devandas	Exh. 75
PW-17	Jethnand Bhudarmal	Exh. 76
PW-18	Ashok Chhatrav	Exh. 77
PW-19	Laxmidas Suraji	Exh. 78
PW-20	Tembha Mahobatsinh	Exh. 79
PW-21	Dr. Chetan Biharilal Jani	Exh. 81
PW-22	Raghuvirsinh Balvantsinh	Exh. 93
PW-23	Bhagvanji Parbatbhai	Exh. 96
PW-24	Ajitsinh Gaguba	Exh. 97
PW-25	Harish Amrutlal	Exh. 98
PW-26	Jay Shyamlal Nagpal	Exh. 99
PW-27	Jilubha Bhimsinh Bhatti	Exh. 100
PW-28	Surubha Shivubha	Exh. 101
PW-29	Gulabkhan Akabarkhan	Exh. 102

PW-30	Jasubha Balvantsinh	Exh. 103
PW-31	Hemantbhai Bhanjibhai	Exh. 104
PW-32	Sanjay Lilaram	Exh. 105
PW-33	Bodu Taiyab	Exh. 107
PW-34	Bachubhai Chimanlal	Exh. 108
PW-35	Hitesh Ramniklal	Exh. 109
PW-36	Vikramsinh Devubha	Exh. 112
PW-37	Gopal Mandan	Exh. 119
PW-38	Dilipsinh Shankardas	Exh. 120
PW-39	Balraj Amubhai	Exh. 122
PW-40	Dipak Pasottambhai	Exh. 123
PW-41	Balvansinh Motibhai	Exh. 124
PW-42	Mamaiyabhai Chanabhai	Exh. 126
PW-43	Laxmiben Laxmanbhai	Exh. 127
PW-44	Manubhai Shivubha	Exh. 129
PW-45	Vajibhai Rukhadbhai	Exh. 130
PW-46	Nirmalsinh Dolubha	Exh. 131
PW-47	Subhash Girjashankar	Exh. 132
PW-48	Sakhraj Kamabhai	Exh. 133
PW-49	Rajesh Hiralal	Exh.134
PW-50	Bhavesh Pravinbhai	Exh. 135
PW-51	Osman Kasam	Exh. 136
PW-52	Vijay Govindbhai	Exh. 137
PW-53	Navjivan Janardan	Exh. 138
PW-54	Navalsinh Murubha	Exh. 141

PW-55	Arvind Fulchand	Exh. 146
PW-56	Jatin Kishorbhai	Exh. 147
PW-57	Dhanraj Ramabhai	Exh. 148
PW-58	Jagdevsinh Takhatsinh	Exh. 155
PW-59	Manshukhbhai Ghelabhai	Exh. 158
PW-60	Bhupatsinh Mansinh	Exh. 160
PW-61	Mahmadhussain Osman	Exh. 161
PW-62	Subhash Fogabhai	Exh.167
PW-63	Manish Navalbhai	Exh. 178
PW-64	Dilipsinh Gatursinh	Exh. 179
PW-65	Gurudayalsinh Sodagarsinh (IO)	Exh. 193

The prosecution has also produced voluminous documentary evidence, as under :

1.	Arrest Panchnama of accused Dharmraj	Exh. 68
2.	Police Yadi as received by Dr. Jani	Exh. 82
3.	Copy of Police letter of P.M.	Exh. 83
4.	P.M. Note	Exh. 84
5.	Copy of Police Yadi for adding name in P.M. Note	Exh. 85
6.	Last page of the copy of P.M. Note	Exh. 86
7.	Copy of Yadi for P.M. of dead body	Exh. 87
8.	Copy of letter for getting scull of deceased	Exh. 88
9.	Statement of information as given by witness Raghuvirsinh Balvantsinh Rana on 4.3.01	Exh. 94
10.	Copy of Proclamation of banning of Arms	Exh. 110

11. Copy of Govt. Gazette dt. 19.2.01 regarding above proclamation	Exh. 111
12. Copy of letter sent to RTO for information as to Yamaha motor cycle	Exh. 113
13. Letter of the RTO as to aforesaid vehicle	Exh. 114
14. Copy of R.C. Book of Yahama	Exh. 115
15. Letter of RTO regarding ownership of Qualis	Exh. 117
16. Information sheet as to ownership of Qualis	Exh. 118
17. Letter of Shri V.M. Mehta Muni. College	Exh. 121
18. Receipt of handing over of dead body	Exh. 125
19. Print of telephone calls as given by witness Laxmiben Laxmanbhai	Exh. 128
20. Copies of the muster rolls of Institute of Yoga	Exh. 139 & 140
21 Letter sent to Telecom Department	Exh. 142
22 Letter sent to Telecom Department	Exh. 143
23 Original letter of CPI written to General Manager, Telecom Department	Exh. 144
24 Police Yadi for preparation of maps	Exh. 149
25 Copy of Police Yadi for maps	Exh. 150
26 Copies of letters of Maps	Exh. 151& 152
27 Maps	Exh.153 & 154
28 Panchnama of recovery of Yamaha Motor cycle	Exh. 156
29 Police Yadi of sending papers and Yamaha	Exh. 157
30 Police Yadi as to production of accused Dharmraj Bhanushanker	Exh. 159
31 Police Yadi of I.T. Parade	Exh. 162

32	Panchnama of I.T. Parade	Exh. 163
33	Panchnama of I.T. parade	Exh. 164
34	Panchnama of I.T. parade	Exh. 165
35	Complaint	Exh. 168
36	Copy of abstract of entry No.10 of police Station diary as made PSI Vadher	Exh. 169
37	Inquest Panchnama	Exh. 170
38	Copy of forms of P.M.	Exh. 171
39	Panchnama of place from where dead body was found	Exh. 173
40	Police Yadi for registration of offence	Exh. 174
41	Copy of abstract of Entry No. 16/2001 of Station Diary of Panchkosi “A” Div.	Exh. 175
42	Arrest Panchnama of accused Jigar	Exh. 176
43	Panchnama of demonstration	Exh. 180
44	Copy of FIR of Manish Navalbhai	Exh. 181
45	Police Yadi as to preparation of panchnama	Exh. 182
46	Copy of abstract of entry of station diary	Exh. 183
47	Copy of yadi as to take blood samples of the accused	Exh. 184
48	Copies of forms of taking of blood sample of each of accused	Exh. 185 to 189
49	Police Yadi as to taking over Investigation	Exh. 190
50	Print of telephone calls as given by witness Gopalbhai Mandanbhai	Exh. 191

51	Copy of letter of RTO regarding owners of Qualis	Exh. 192
52	Letter of appointment of investigation team	Exh. 194
53	Panchnama of identification of dead body	Exh. 195
54	Police Yadi as to sending of investigating papers	Exh. 196
55	Panchnama of seizure of vehicle used in the offence	Exh. 197
56	Panchnama of scene of offence as shown by accused Dharmraj Bhanushanker	Exh. 198
57	Discovery of panchnama	Exh. 199
58	Arrest panchnama of accused Mahipalsinh Mahendrasinh	Exh. 200
59	Report of P.I. Of L.C.B.	Exh. 201
60	Panchnama of place as shown by accused Mahipalsinh Mahendrasinh	Exh. 202
61	Panchnama of weapon as produced by accused Jigar Natha	Exh. 203
62	Discovery panchnama of weapon as shown by accused Jigar Natha	Exh. 204
63	Panchnama of facts as stated by the accused Jigar Natha	Exh. 205
64	Arrest Panchnama of Dharmendrasinh	Exh. 206
65	Report as prepared by P.I. of LCB	Exh. 207
66	Discovery panchnama of weapon as shown by accused Dharmendrasinh Narendrasinh	Exh. 208
67	Panchnama of identification of muddamal	Exh. 209
68	Primary report of inspection of place	Exh. 210

69	Copy of letter sending muddamal for analysis to FSL	Exh. 211
70	Copy of certificate of authority	Exh. 212
71	Copy of out-ward note	Exh. 213
72	Receipts of muddamal	Exh. 214 to 217
73	Forwarding letters as to analysis reports	Exh. 218, 220, 222 & 224,227, 229 & 233
74	Analysis Reports	Exh. 219, 221, 223 & 225
75	Serological analysis report	Exh. 226
76	Analysis report of ash	Exh. 228
77	Copy of certificate of authority	Exh. 230
78	Copy of forwarding letter	Exh. 231
79	Receipt of muddamal	Exh. 232
80	Analysis report with three photographs	Exh. 234
81	Copy of letter as to take finger print of the deceased	Exh. 235
82	Copy of letter as to calling for information of Qualis	Exh. 236
83	Letter of Traffic PSI	Exh. 237
84	Copy of letter of adding Sec. 120(B) and Sec. 405 of the IPC	Exh. 238
85	Copy of letter sent to the Principal VM Mehta Arts & Commerce College	Exh. 239
86	Copy of letter sent to the Principal DCC High School	Exh. 240
87	Letter of the Principal, DDC High School	Exh. 241

88	Copy of muster roll as sent by the Principal	Exh. 242
89	Copy of letter as to transfer offence	Exh. 243
90	Copy of complaint filed by Jigar Natha	Exh. 244
91	Copy of letter as written by CPI to PI, City “B”.	Exh. 245
92	Copy of letter for information of Qualis	Exh. 116

5 After the prosecution evidence was over, the circumstances appearing against each of the respondents were put by the learned Trial Court to respondents and their statements were recorded under Section 313 of the Code of Criminal Procedure. The stand of the respondents was that they were innocent and they had been falsely implicated in the serious case. It appears that their defence was of total denial.

6 Learned APP Mr. K.C. Shah for the State and learned Advocate Mr. Tushar Mehta for respondents were heard in great detail. Both the learned counsels have taken us to each corner of the Record and Proceedings of the Trial Court.

7 We have examined each corner of the record and proceedings strictly and threadbare. We have scrutinized the evidence recorded during the trial and the documents produced on record. Though this is an Appeal against the acquittal, we have re-appreciated the evidence carefully as recorded during the trial. We

have examined and assessed with great anxiety the reasons recorded by the Trial Court for the conclusion of acquittal of the respondents. We have taken into consideration the vital features of the matter and reasonable probabilities arising out of the circumstances of the matter with reference to the appreciation of evidence undertaken by the Trial Court and with reference to re-appreciation of evidence carefully undertaken by us. We have taken into consideration the contentions raised by both the parties at marathon length.

8 Going through the evidence recorded during the trial, it clearly appears that the case rests on circumstantial evidence and no direct evidence is available against the respondents. It was alleged that deceased Gajendrasinh Balvantsinh Rana was called by the respondents on 3rd of March, 2001 in disguise for demand of money and thereafter he was accompanied by the respondents in the Qualis car belonged to the father of the respondent No.1 from Mahila College. The deceased was taken to Ranjitsagar Dam and was murdered there. The accused thereafter carried the dead body of the deceased in the said Qualis car near Sapada Dam and was put to ablaze after pouring petrol and kerosene over the dead body behind thick bushes at Sapada where the complainant and some persons saw that a white vehicle was going fast and coming fast from said place, appearing to be the make of Tata Sumo, and thereafter some persons noticed burning of dead body.

Yamaha Motorcycle was found near Mahila College and it was identified to be of the deceased. The prosecution attempted to rely on the evidence of witnesses who have seen white Qualis car near Sapada dam. Evidence of the persons who noticed the deceased boarded in the Qualis car near Mahila College and the Qualis car belonged to the father of respondent No.1. The prosecution has relied upon the discovery panchnamas, whereby it is alleged that the deceased was wearing some ornaments, which were recovered from the accused, shoes of the deceased also were recovered from the possession of the accused, the clothes of the accused, which they were wearing at the time of committing the crime, were also attached by the Investigating Agency, and it is the prosecution case that, said clothes contained blood group of the deceased. The prosecution has also relied upon the evidence of Test Identification Parade. The prosecution has also relied upon demonstrative panchnama, by which it is alleged that accused have demonstrated that how they committed the crime and show the scene of offence.

9 Now, it is required to be scrutinized the evidence recorded during the trial with respect to the above circumstances, by which the prosecution proposed to prove its case.

9.1 If we peruse the evidence of PW-1 Hemantsinh Gagubha Jadeja, examined at Exhibit – 59, he is the panch of

panchnama at Exhibit – 173 of scene of offence, where it is the prosecution case that complainant Mumaiyabhai Chanabhai show the place of incident. He did not support the prosecution case and like wise second panch of the said panchnama, PW-3 Satubha Narubha, examined at Exhibit-61, also did not support the said panchanama at Exhibit – 173. PW-3 Satubha Narubha is also a panch of panchnama of identification of dead body and he did not support the said panchnama, which is placed at Exhibit – 195.

9.2 PW-4 Jitesh Prabhujibhai Chavda, examined at Exhibit – 62, is panch of panchnama of Test Identification Parade placed at Exhibit – 162, but he also did not support the prosecution case and stated that it did not happen that witness Ajitsinh Gagubha Jadeja identified the accused No.1 and witness Surubha Shivubha Chouhan identified accused No.4 in the identification parade, held on 7th of March, 2001 at 4.25 p.m. in the chamber of the Executive Magistrate. PW-5 Nitinkumar Dhanjibhai is also panch of panchnama of test identification parade, held on 7th of March, 2001, but he has also not supported the prosecution case. He denied that in his presence, witness Ajitsinh Gagubha Jadeja and Surubha Shivubha Chouhan identified accused Nos. 1 and 4 in identification parade. It is the prosecution case that PW-23 Ajitsinh Gagubha and PW-28 Surubha Shivubha, both had seen the respondents and the deceased in one Tata Sumo car, near Sapada Dam. It is the prosecution case that respondents had purchased

coconut from the shop of Ajitsinh and took tea from the tea cabin of Surubha on the day of incident while they were going to Sapada Dam in Qualis car.

9.3 PW-6 Hira Parbat, examined at Exhibit – 64, is panch of recovery of Qualis car and of panchnama Exhibit – 197. He has also turned hostile and did not support the prosecution case that the Investigating Agency, in his presence, attached one Toyota Qualis car bearing No. GJ-10-F-9654 on 5th of March, 2001 at 10.00 a.m. and there were bloodstains on the seats of the car. The witness has not supported the prosecution case and panchnama at Exhibit – 197. PW-7 Kana Kara, examined at Exhibit- 65, is the second panch of panchnama at Exhibit – 197 and he has also not supported the prosecution case that in their presence, the Qualis car was attached from respondent No.1.

9.4 PW-8 Iqbal Umarbhai Nayak, examined at Exhibit- 66, is the panch witness of panchnama at Exhibit – 198 along with other panch Mahebub Sadiq. According to this panchnama, the respondent No.1 – accused No.1 in their presence, show the demonstration of the crime committed by them and took the panchas and police to Ranjit Sagar Dam where he was done to death and their presence, bloodstained earth was attached by the Police. From there, the accused took them to Sapada Dam where the dead body was burnt. However, this panch did not support the

prosecution case and stated that he did not know anything about this panchnama. PW-9 Mahebub Sadiq, examined at Exhibit – 67, and second panch of panchnama at Exhibit – 198 also did not support the prosecution case.

9.5 PW-10 Kishorsinh Bahadursinh, examined at Exhibit – 69 is panch of panchnama at Exhibit – 200, by which sport shoes of the deceased stated to have been recovered from the house of respondent No.1. The second panch – PW-11 Lakhabhai Danabhai, is examined at Exhibit – 70. Both these panchas have not supported the prosecution case and have been declared hostile. Both the witnesses stated that in ready made panchnama their signatures were obtained and on muddamal slips also their signatures were obtained, but nothing they knew about the panchnama.

9.6 PW-12 Raghuvirsinh Navalsinh Jadeja, examined at Exhibit -91, is panch of arrest panchnama of respondent No.3 and according to prosecution case other sport shoes of the deceased having bloodstains and one pant and shirt were recovered from the house of respondent No.3 Jigar Nathalal Faldu from a cup board kept in the house of respondent No.3, but this witness has also not supported the prosecution case.

9.7 PW-13 Nathubhai Hirabhai, examined at Exhibit – 72, is a panch witness and on 8th of March, 2001, according to this

panchnama, recovered muddamal from the respondents i.e. one gold chain, one tiger nail and one brass chain and shoes were identified by father of the deceased in his presence, but this witness has also not supported the prosecution case and stated that except his signature at the police station, he did not know anything else.

9.8 PW-14 Digvijaysinhji Lalsinh, examined at Exhibit – 73, is a panch of discovery panchnama, placed at Exhibit-206. It is the prosecution case that accused No.4 Dharmendrasinh Narendrasinh Gohil in their presence declared that at Shiva Apartment, in Block No.6, weapons used in the crime, were concealed and he was prepared to show. He took police and panchas at that house and below the bed, a knife, one iron rod, etc were taken out by accused No.4 in the presence of panchas i.e. this witness and Vijaysinh Kanubha Chavda. However, this witness has not supported the prosecution case in any respect and stated that in ready made panchnama, they had signed but knew nothing about the panchnama. PW-15 Vijaysinh Kanubha Chavda, examined at Exhibit-74 is also second panch of panchnama at Exhibit – 206 and did not support the prosecution case.

9.9 PW-16 Dolatram Devandas, examined at Exhibit - 75 and PW-17 Jethnand Bhudarmal, examined at Exhibit – 76, are panchas of panchnamas Exhibit – 203 and Exhibit–204. Panchnama – Exhibit-203 is drawn on 7th of March, 2003 from 9.30

to 11.40 a.m. while panchnama – Exhibit-204 is drawn on the same day from 11.50 to 13.30 hours. By panchnama Exhibit–203, it is the case of the prosecution that in presence of these panchas, accused No.3 Jigar Nathalal Faldu, volunteered to give some information to the police and preliminary panchnama in this respect was drawn and thereafter the accused took police and panchas near palace ground at Jamnagar. There were big babul trees and on southern side, there was one well and accused No.3 stated that in the said well a knife was concealed by him. Therefore, the police called one person Mavji Bachu, who went in the well and found the knife, which is attached by the police as muddamal. However, none of the panchas i.e. PW-16 or PW-17 supported this panchanama and stated that their signatures were obtained on ready made panchnama and they knew nothing about the panchnama and its contents. Likewise, panchanama - Exhibit – 204 produced by the prosecution is in respect that accused No.3 Jigar Nathalal Faldu, volunteered to show something before these panchas and police. A preliminary panchnama was drawn and thereafter accused took police and panchas at Sankalan road and from there the accused No.3 took all of them to Fiyonica Society. In the said society, the accused led all persons and police to a house named as Gayatrikrupa. The accused ascended the stairs in the said house and from western wall of one room, from one cup board of cement, below one magazine, he took out two chains and one tiger nail. Those muddamal was attached by the police and it was verified

through the goldsmith that what was the metal of the chain and tiger nail. One chain was in two pieces. In the presence of panchas, according to prosecution case, all these muddamal was attached. However, neither PW-16 nor PW-17 supported the prosecution case in this respect and again stated that they signed prepared panchnama and they did not know anything about the contents of the panchnama nor any time they were led by accused No.3 anywhere. Both these witnesses were declared hostile though nothing could be extracted fruitful from the cross-examination of the prosecution.

9.10 PW-18 Ashok Chhatrav Lilvani, examined at Exhibit -77, is panch of discovery made in presence of this witness and PW-19 Laxmidas Suraji, examined at Exhibit – 78. According to this panchnama, accused No.4, in their presence, show the place where the Qualis car was washed by him and the clothes with which said Qualis car was washed, came to be produced by accused No.4 by this panchnama. It is the prosecution case that accused No.4 discovered slippers of the deceased near palace ground and near one well. This panchnama is placed at Exhibit – 208. Second panch of this panchnama is PW-19 Laxmidas Suraji, examined at Exhibit- 78, but both these panchas disowned the panchnama and turned hostile.

9.11 PW-20 Tembha Mahobatsinh, examined at Exhibit-79, was concerned ASI at Jamnagar. According to him, before the incident, the accused had been to him and complained that deceased was harassing them and was threatening. This is the only evidence of this witness.

9.12 PW-21 Dr. Chetan Biharilal Jani, examined at Exhibit – 81, is the Medical Officer at M.P. Shah Medical College and was serving in Forensic Science Medical Department. On 4th of March, 2001, he conducted postmortem of the dead body and he noted the injuries on the dead body. He produced on record postmortem notes at Exhibit-84. Dead body had multiple injuries as has been mentioned in Column – 17 of said postmortem note. There is no dispute between the parties that the death of the deceased was homicidal and the death was caused due to injuries on head, neck, chest, etc. It was opined by the witness that consumption of alcohol had been suspected and death was about between 18 to 36 hours from the beginning of the postmortem examination. Postmortem was conducted on 4th of March, 2001 at about 10.40 a.m.

9.13 PW-22, Raghuvirsinh Balvantsinh Rana, examined at Exhibit – 93, is brother of the deceased. He narrated the story that how the deceased had been out of their house on 3rd of March, 2001 and did not return. He stated that a phone call was received

by deceased and deceased talked in the said phone about 15 minutes. He identified Yamaha Motorcycle abandoned near Mahila College. It was attached by the police and belonged to the deceased. When he was confronted with the shoes attached by the police, he stated that the said shoes did not belong to his brother. He also stated that slippers attached by the police were not belonging to his brother. He identified tiger nail and one gold chain belonging to his brother and the other chain of brass, according to this witness, did not belong to his brother. He stated in his cross-examination that dead body was entrusted to his father and in funeral ceremony, accused were present and while dealing with the dead body, their clothes were bloodstained. The accused were present till the dead body was taken to crematorium.

9.14 PW-23 Bhagvanji Parbatbhai, examined at Exhibit – 96, is panch of panchnama at Exhibit – 170 about inquest, but this panch did not support the prosecution case. PW-24 Ajitsinh Gagubha, examined at Exhibit – 97, is second panch of Exhibit – 170 inquest panchnama, but this witness has also not supported the prosecution case.

9.15 PW-25 Harish Amrutlal, examined at Exhibit – 98, is panch of panchnama at Exhibit – 199 and according to this panchnama, accused No.1 in police custody volunteered to show something to panchas and stated that he bought one coconut and

incense sticks from the shop of PW-24 Ajitsinh Gagubha. He had kept those articles at his house and the clothes which he had worn at the time of crime. He took panchas near Swastic Society and his residential apartment which was known as Arihant Apartment and from one wooden box, near the electric meter, the accused No.1 discovered one coconut and then from his apartment at first floor, where the mother of respondent No.1 was present, clothes were recovered. This panchnama is in detail, but PW-25 Harish Amrutlal nor PW-26 Jay Shyamal Nagpal, second panch of this panchnama , examined at Exhibit – 99, supported this panchnama in any manner. They stated that they signed the panchnama and did not know anything about this panchnama.

9.16 PW-27 Jilubha Bhimsinh Bhatti, examined at Exhibit – 100, is a person to whom complainant Maumaiyabhai Chanabhai conveyed that from one Qualis car a dead body was thrown but this witness also has turned hostile and did not support the prosecution case.

9.17 PW-28 Surubha Shivubha, examined at Exhibit-101, is a person, having a hotel and Bhajia house near Lalpur Bye-pass road. According to the prosecution case, while he was at his hotel on 3rd of March, 2001, he noticed one white Qualis car coming from Jamnagar and two persons got down from that car and took tea at his hotel, but in his deposition, he turned hostile and did not

support the prosecution case.

Necessary it is to observe that PW-24 Ajitsinh Gagubha and this witness PW-28 Surubha Shivubha were also present when test identification parade was held wherein according to the prosecution case accused No.1 and other accused were identified. These two witnesses also did not support the prosecution case in any manner.

9.18 PW-29 Gulabkhan Akbarkhan, examined at Exhibit – 102, is also a panch of panchnama at Exhibit – 205. Second panch of panchnama is PW-30 Jasubha Balvantsinh, examined at Exhibit-103. This panchnama is in respect of accused No.3, Jigar Nathalal Faldu. According to prosecution case, in presence of panchas, accused No.3 volunteered to show something and took panchas to the road leading to Mahila College and show one STD PCO from where they had called the deceased telephonically to come near Mahila College. This panchnama is in detail, but none of the prosecution witnesses i.e. PW-29 Gulabkhan Akbarkhan or PW-30 Jasubha Balvantsinh supported the version of the prosecution.

9.19 PW-31, Hemantbhai Bhanjibhai Rathod, examined at Exhibit – 104, is panch of panchnama placed at Exhibit – 180. According to this panchnama, accused No.4 Dharmendrasinh Narendrasinh Gohil volunteered to show the scene of offence and

volunteered to demonstrate the crime which was committed by them. He took panchas and police to the scene of offence. This witness and other witness PW-32 Sanjay Lilaram, examined at Exhibit-105, second panch of that panchnama, did not support, in any manner, the prosecution case and panchnama.

9.20 Likewise, PW-33 Bodu Taiyab, examined at Exhibit – 107 and PW-34 Bachubhai Chimanlal, examined at Exhibit – 108 are the panchas of panchnama by which, according to prosecution case, accused No.2 Mahipalsinh Mahendrasinh Jethwa show demonstration of crime they committed, but none of these witnesses supported the prosecution case.

9.21 PW-35 Hitesh Ramniklal, Exhibit- 109, is examined from the office of the District Magistrate to prove a Notification under the Bombay Police Act. That Notification is placed at Exhibit-110.

9.22 PW-36 Vikramsinh Devubha, examined at Exhibit-112 is an witness, who confirmed that the Yamaha Motorcycle bearing No. GJ-3-F 9119 was belonged to the deceased. He also confirmed that the Qualis car attached in this crime was owned by the father of respondent No.1. Necessary documents in this respect is placed at Exhibits 114 to 118. The witness is from ARTO Office, Jamnagar.

9.23 PW-37 Gopal Mandan, examined at Exhibit – 119 is the person who owns the STD PCO near Oswal Colony Bhgavati Center. It is the prosecution case that some phone calls were made by the respondents from this STD PCO to call the deceased. He was confronted with some prints of the calls made from his STD PCO, but he denied that the said prints belonged to his PCO. He stated that many persons came to his PCO for telephoning and he was taken by the police in lock up but he could not identify anyone. It is the prosecution case that in T.I. Parade, he identified two respondents who had come to his STD PCO on 3rd of March, 2001 in the morning. But this witness did not support the prosecution case.

9.24 PW-38 Dilipsinh Shankardas Aasar, examined at Exhibit-120 is the Principal of V.M. Mehta College and examined to ascertain whether accused Mahipalsinh Mahendrasinh Jethwa; accused Dharmendrasinh Narendrasinh Gohil; accused Dharmraj Bhanushankar Dave and accused Jigar Nathalal Faldu studying in their college were present in class room on the day of incident. He produced on record at Exhibit – 121 the Yadi which he had given to the police and according to that during 26th of February, 2001 to 11th of March, 2001, the College was closed for the study of the students and, therefore, he could not say whether the accused were present in the college or not.

9.25 PW-39 Balraj Amubhai, examined at Exhibit - 122 is the witness and cousin brother of accused Dharmraj Bhanushankar Dave and according to prosecution case, on 4th of March, 2001, while he was standing near Rajpal House with his Hero Honda Motorcycle, accused No.1 Dharmraj Bhanushankar Dave requested the witness to accompany him and on his Hero Honda Motorcycle, both went near Vinay Park and in one gutter line accused No.1 had thrown one bag which was with him in the said gutter. The witness has not supported the prosecution case in any respect.

9.26 PW-40 Dipak Parsottambhai, examined at Exhibit-123, is a witness working as RTO agent. He had friendship with accused No.4. The witness is examined to show that the deceased had thick friendship with the accused and since the deceased was of particular character and was used as a shield by the accused and others. This witness is not helpful in any manner to the prosecution. He is examined to show that accused and deceased had some illegal financial dealings and on account of that, there was some dispute amongst them.

9.27 PW-41 Balvantsinh Motibhai Rana, examined at Exhibit – 124, is the father of the deceased Gajendrasinh. He stated that on 3rd of March, 2001, one phone call was received by Gajendrasinh at about 8.30 a.m. and in pursuance of said phone

call, he went out of his house. He also took Rs. 150/- from his mother for filling petrol in his motorcycle. He also wore a golden chain of his mother and went out. He did not return and, therefore, he searched and ultimately police informed him about unknown dead body and he identified the dead body at Morg. He had identified the golden chain, tiger nail and one brass chain before the police. He also stated that before two days of the incident, accused No.4 had been to his house and brass chain, tiger nail and one red colour shoes he borrowed from deceased Gajendrasinh because Dharmendrasinh wanted to go out for some occasion. In his examination-in-cross, about the brass chain, he has stated that he has no particular identity mark on that. This is all is the evidence of the father of the deceased.

9.28 PW-42 Mamaiyabhai Chanabhai, examined at Exhibit-126, is the complainant. According to him, he noticed one Sumo Car and one Dilipsinh Shankardas was with him. He was staying near Sapada Dam in a field. One white colour Sumo car came from Jamnagar and they noticed the smoke behind the bush and thereafter they found that one dead body was burning. They attempted to took the number of white colour car but they could not get the same. Other persons also informed them that one dead body was burning. They conveyed this incident to Vice President of Panchayat Jilubha Bhimsinh. According to them, in said Qualis car, there were three persons and they were aged about 50 to 55

years. He gave the complaint in this respect to the police. In cross-examination, he confirmed that while they were sitting near their hut, they noticed that three persons aged about 50 to 55 years were in Tata Sumo car. He was confronted with the accused and the witness stated that none of the accused was in the Tata Sumo car.

9.29 PW-43 Laxmiben Laxmanbhai, examined at Exhibit – 127, is also a owner of one STD PCO. She stated that on 2nd of March, 2001 and 3rd of March, 2001, many persons had come to her PCO for making phone calls. Of course, it is found that a phone call was made at No. 770009 at 8.15 a.m. at the residence of the deceased from her STD PCO, but the witness failed to state that, in fact, who made this phone call. She produced on record at Exhibit – 128, prints of such calls.

9.30 PW-44 Manubhai Shivubha, examined at Exhibit-129 is the person, who was waiting near Sapada Dam, on the day of the incident for ST bus. He also noticed one white colour car coming from Jamnagar in full speed and within no time the said car returned from Sapada Dam. That car had overtaken the bus in which he was travelling. He noticed a Qualis car but he refused to have stated that fact in his police statement. In cross-examination he admitted that on the day of the incident, he had noticed a Tata Sumo car and the windows of the car were closed by the glass.

From the glass, he noticed that there were in all three persons in the said Tata Sumo car and that those persons were aged about 50 to 55 years.

9.31 PW-45 Vajibhai Rukhadbhai, examined at Exhibit-130, is also a person, staying with his brother-in-law Maumaiyabhai Chanabhai, near Sapada Dam. He noticed on the day of the incident, one white colour car came to Sapada Dam from Jamnagar and thereafter from behind bushes smoke appeared. In the meantime, the said car returned and, therefore, he attempted to note the number of said car. However, the said car had no number plate. He informed this fact to Maumaiyabhai Chanabhai. In his cross-examination, he admits that the car which he had noticed was Tata Sumo car of white colour and he noticed three persons sitting in the said car and they were aged about 50 to 55 years.

9.32 PW-46 Nirmalsinh Dolubha Jhala, examined at Exhibit – 131, is the person, according to the prosecution case, owns a cabin for tea, etc near Aasha Apartment, Mayur Society. It is the prosecution case that deceased boarded in the Qualis car near the tea cabin of this witness. According to prosecution case, this witness knew the deceased and he noticed the deceased boarding in Qualis car of white colour with unknown persons. However, this witness has also not supported the prosecution

9.33 PW-47 Subhash Girjashankar Joshi, examined at Exhibit - 132, is a witness of the same fact. He noticed the deceased boarding in Qualis car with the accused after parking his motorcycle near his Pan cabin situated near the hospital of Dr. Bhuva. This witness has also not supported the prosecution case.

9.34 PW-48 Sakhraj Kamabhai, examined at Exhibit- 133, stated that on the day of incident, he was grazing his cattle near Sapada Dam. At about 9.45, he noticed three persons near one dead body. Three persons burnt the said dead body of one male and all these three persons were aged about 50 to 55 years. He also noticed one Tata Sumo vehicle of white colour, in which these three persons had come. He knew those persons, but not by name. Those three persons thereafter left in the said Tata Sumo car. The witness was confronted with the accused and the witness stated that none of the accused was noticed at relevant juncture by him near Sapada Dam.

9.35 PW-49 Rajesh Hiralal Trivedi, examined at Exhibit 134 is panch of Test Identification Parade panchnama, produced at Exhibit-165. According to prosecution case, in presence of this witness Rajesh Hiralal and PW-50 Bhavesh Pravinbhai Bhatt, examined at Exhibit – 135, T.I. Parade was held by the Executive Magistrate, on 9th of March, 2001 at about 17.00 hours. According

to the prosecution case, witness Bakul Bhavsar identified accused No.1 Dharmraj Bhanushankar Dave and witness Gopal Madan Patel identified accused No.2 Mahipalsinh Mahendrasinh Jethwa. However, neither PW-49 Rajesh Hiralal nor PW-50 Bhavesh Pravinbhai supported the panchnama at Exhibit – 165 and turned hostile.

9.36 PW-51 Osman Kasam, examined at Exhibit- 136 is a panch of panchnama, in whose presence, Balvantsinh Motibhai Rana, identified dead body of the deceased Gajendrasinh, on 4th of March, 2001. The clothes worn by the deceased also were identified by Balvantsinh Motibhai Rana in the presence of panchas of this panchnama. That Panchnama is placed at Exhibit–195, but PW-51 has not supported the prosecution case, in any manner.

9.37 PW-52 Vijay Govindbhai Kankhra, examined at Exhibit-137 is also second panch of panchnama, by which, it is the prosecution case that Balvantsinh Motibhai Rana and Raghuvirsinh Balvantbhai Rana, father and brother of the deceased, identified muddamal articles i.e. gold chain, one tiger nail and one brass chain, slippers and shoes to be of the deceased. That panchnama is placed at Exhibit- 209, but this witness has not supported the prosecution case and stated that the police obtained his signature on ready made panchnama.

9.38 PW-53 Navjivan Janardan Viswakarma, examined at Exhibit-138, is a Yoga Teacher, where accused No.2 Mahipalsinh Mahendrasinh Jethwa, was attending classes of Naturopathy. The time of the class was 6.00 a.m. to 8.00 a.m. The witness stated that on 3rd of March, 2001, accused No.2 Mahipalsinh Mahendrasinh Jethwa attended such classes from 6.00 a.m. to 8.00 a.m. His attendance was taken, which he produced in the court at Exhibits 139 and 140.

9.39 PW-54 Navalsinh Murubha Chudasma, examined at Exhibit–54, who was serving in Diamond Market, around 12th of March, 2001, some details were asked by the Investigating Agency from him about telephone numbers of the deceased vide document placed at Exhibit-143. It is revealed that Telephone No. 770009 was in the name of Rana Balvantsinh Motibhai at the address Block No.2, Shakti Bhuvan, Opposite : Sandip Society, Opp: T.B. Hospital, Jamnagar. The witness has given the details of telephone numbers 540572 i.e. STD PCO and Telephone No. 564701 of other STD PCO. This is all the witness stated.

9.40 PW - 55, Arvind Fulchand Sanghvi, examined at Exhibit-146, is the witness, residing near KV College, Bank of India Colony. He stated that just Opposite his house, near Mahila College, motorcycle belonging to the deceased was parked and was kept parked for two days and thereafter the police attached the

said motorcycle. This is all the witness deposed.

9.41 PW- 56 Jatin Kishorbhai Pandya, examined at Exhibit-147 was Police Constable in Jamnagar City `A' Division Police Station. On 4th of March, 2001, as per the instruction of PSI, Sisodiya, they had attached one motorcycle, which this witness identified to be belonging to the deceased.

9.42 PW–57 Dhanraj Ramabhai was working as Circle Inspector in Revenue Department. He was called by the Police on 13th of March, 2001 by a Yadi and he prepared maps of scene of offence near Ranjit Sagar Dam, which is placed on record at Exhibits 153 and 154. Map placed at Exhibit-154 is scene of offence near Sapada Dam.

9.43 PW-58, Jagdevsinh Takhatsinh Sisodiya, examined at Exhibit-155, was serving as PSI at Hanuman Police Chowky, Jamnagar, to whom one Arvind Sanghvi i.e. PW-55 informed that one Yamaha Motorcycle was parked near Mahila College since last two days. He prepared the panchnama and attached the motorcycle. That panchnama is produced at Exhibit – 156.

9.44 PW-59 Manshukhbhai Ghelabhai Vala, examined at Exhibit-158, was Unarmed Police Constable, working in Jamnagar City `B' Division Police Station, on 5th of March, 2001. He was

patrolling on that day near Patel area at about 9.30 a.m. when accused No.1 Dharmraj Bhanushankar Dave passed in Qualis car bearing No. GJ-10-F-9654. He attached the car and produced the said car to the Circle Police Inspector and made a report, which is placed at Exhibit – 159. He has been cross-examined by defence side.

9.45 PW-60 Bhupatsinh Mansinh Jadeja, examined at Exhibit-160 was Police Head Constable at Panchkoshi `A' Division Police Station, Jamnagar. On 23rd of March, 2001, he had carried out muddamal of this case to FSL, Junagadh. He was accompanied by Head Constable Jaydevsinh Hamirsinh Jhala. The Qualis car attached was also taken to Junagadh and the said car was driven by Driver Jusaf Ibrahim. The car was taken there by toeing. He has been cross-examined by the defence.

9.46 PW-61 Mahmadhussain Osman, examined at Exhibit-161 was serving as Executive Magistrate on 7th of March, 2001. In this crime, vide Yadi, he was informed by Panchkoshi `A' Division Police Station, Jamnagar, to hold an identification parade to identify the accused for witness Surubha Shivubha Chouhan and Ajitsinh Gagubha. On 7th of March, 2001 at 4.25 p.m. he arranged said test identification parade in the presence of panchas and other 15 dummy persons wherein both of these witnesses identified accused No.4 Dharmendrasinh Narendrasinh Gohil and accused

No.1 Dharmraj Bhanushankar Dave. On 9th of March, 2001, he was asked again to perform one more T.I. Parade by police and in the said parade, witnesses Bakul Bhavsar and Gopal Mandan, both identified accused No.1 Dharmraj Bhanushankar Dave and accused No.2 Mahipalsinh Mahendrasinh Jethwa. He has been cross-examined by the defence in detail.

9.47 PW - 62 Subhash Fogabhai Vadher, examined at Exhibit-167 was working as Police Sub-Inspector in Panchkoshi `A' Division Police Station, Jamnagar. On 3rd of March, 2001, he was informed by Sapada Sarpanch about the burning of the dead body. He came to Sapada Dam and recorded complaint of Maumaiyabhai Chanabhai Bharwad. He draw inquest panchnama of unidentified dead body and, thereafter, forwarded the papers to PSO for registration of crime. The complaint was identified by him, which is placed at Exhibit–169. He identified other papers also, which are placed on record. The witness is cross-examined by the defence.

9.48 PW - 63 Manish Navalbhai Dhumra, examined at Exhibit-178, is the witness, examined by the prosecution to prove that the deceased was of particular character and, therefore, he had enmity with the accused and was extorting amount from the accused. On account of some speculation, accused No.4 was demanding Rs. 12,000/- from this witness and he tried to recover this amount from different persons. One of them was deceased and

that deceased was harassing these persons. Gajendrasinh i.e. deceased extorted amount of Rs. 41,000/- from this witness, and for that, he had given complaint before Jamnagar City `B' Division Police Station, which was shown to him from record. However, the witness did not support this allegation. In cross-examination he admitted that deceased was his friend and he also admitted that along with the deceased and other friends, they were playing speculations. This is all the witness has stated.

9.49 PW – 64 Dilipsinh Gatursinh Vaghela, examined at Exhibit – 179, was the First Investigating Officer. A team was formed by DSP and this witness was one of the members of the team. He narrated in his deposition how the investigation was carried out by him. Thereafter, PW-65 Gurudayalsinh Sodagarsinh Kherah, examined at Exhibit–193 was the second Investigating Officer and along with other team members he continued the investigation. He recorded the statements of the witnesses and attached Qualis car and draw all the panchnamas. All the panchnamas are produced by him. He has been cross-examined by the defence. He admitted that it was revealed during investigation that a car like Tata Sumo was involved in the offence. No panchnama of identification of car through the witness, who had noticed the said car, was prepared during investigation. He admitted that an attempt was made to obtain print of tyres from the roads, but no such prints were available. He was asked about

the Test Identification Parade.

10 This is all is the evidence of the prosecution.

11 From the above evidence, it is clear that the case hinges on circumstantial evidence only. We have to examine the circumstance of the case and to come to the conclusion whether the appreciation of the evidence as undertaken by the Trial Court was proper and conclusion arrived at by the Trial Court was probable.

12 In respect of test identification parade, as mentioned above, the clear law is that, the test identification parade is not the substantive piece of evidence, but it is a corroborative piece of evidence to the fact that a witness identifies the accused before the court. This is so because test identification parade is early identification of the accused brought to the record. Unless the witness identifies the accused in the court, the evidence of test identification parade, which is not substantive evidence, is of no avail to the prosecution. In the present case, it is found that, though the Executive Magistrate Mahamdhussain Osman, PW-61, deposed about two identification parades, but the witnesses in this identification parades, i.e. PW-24 Ajitsinh Gagubha and PW-28 Surubha Shivubha before the court did not say that they knew the accused and that they identified the accused before the

Executive Magistrate in test identification parade. Like wise, for the other identification parade, PW-37 Gopal Mandan, owner of STD PCO, could not identify accused No.2 Mahipalsinh Mahendrasinh Jetwa before the court nor stated that he had identified the said accused in test identification parade. While fourth witness Bakul Bhavsar has not been examined by the prosecution. Therefore, so far as identification of the accused near Sapada Dam and before STD PCO Manager is concerned, could not be proved beyond doubt by the prosecution and substantive evidence of witnesses identifying the accused before the court is not coming forward. In addition to this, all the witnesses of both the panchnamas have not supported the prosecution case. When there is no substantive evidence of identification of the accused by the witnesses before the court to prove the identification of the accused, the evidence of test identification parade, which is corroborative evidence, cannot be taken into consideration. So, this circumstance which is heavily relied upon by the prosecution, could not be proved against the accused.

13 So far as the panchnamas produced by the prosecution about demonstration of the crime is concerned, the same are hit by Section 25 of the Evidence Act. The prosecution has relied upon the panchnamas, by which the accused gave information to show the places of scene of offence and then to demonstrate how they

committed the crime. Though panchas of these panchnamas have turned hostile, but even if taking into consideration the evidence of Investigating Agency, these panchnamas are not admissible in evidence, as this is the confession of the accused before the Police Officer.

14 At the outset, it is necessary to state that, all the panchas of all the panchnamas, as appreciated above, have turned hostile and have not supported the prosecution case in any respect.

15 It is necessary to note that PW-22 Raghuvirsinh Balvantsinh Rana, examined at Exhibit- 93, brother of the deceased, in specific terms submitted that except brass chain, none of the articles of muddamal belonged to his deceased brother. In this respect, father Balvantsinh Motibhai Rana, examined at Exhibit – 124 stated that out of the muddamals, some of the muddamal articles were given to one of the accused by his deceased son because the said accused was going out. The said accused i.e. accused No.4 Dharmendrasinh Narendrasinh Gohil, was the friend of his deceased son and, therefore, the evidence as to the recovery of the articles from the accused becomes doubtful and this circumstance is also no helpful to the prosecution case and bringing the case within the proximity of the accused.

16 Attempt on the part of the prosecution to prove that

one call was made by accused No.4 to the deceased from STD PCO. So one of the STD PCO print out, it is found that a call was made to the resident of the deceased by someone. However, the prosecution could not establish beyond doubt that the said call was made by the accused and accused only. Witness PW-37 Gopal Mandan could not identify any of the accused in this respect nor other two witnesses i.e. PW-47 Subhash Girjashankar Joshi, examined at Exhibit- 132 and PW-46 Nirmalsinh Doluba, examined at Exhibit- 131, are the witnesses to prove the fact that near Mahila College, deceased parked his Motorcycle and boarded in Qualis car wherein respondents were inside the car, but none of these witnesses supported the prosecution case and so this link of chain could not be proved by the prosecution beyond reasonable doubt.

17 PW – 42 Mamaiyabhai Chanabhai, examined at Exhibit – 126; PW-44 Manubhai Shivubha, examined at Exhibit-129 and PW-45 Vajibhai Rukhadbhai, examined at Exhibit – 130, are the witnesses present at Sapada Dam when a car came and dead body was burnt. When the evidence of these witnesses was appreciated collectively, what is found is, some car appearing like Tata Sumo car, came at Sapada Dam, gone to the next brink of the dam and behind bushes, the dead body was thrown and when smoke came out, witnesses alarmed and found that a dead body was thrown from the said car and was burnt. However, when these witnesses deposed before the court, it came out crystal clear

that none of the witnesses identified any of the accused and on the contrary, they stated that when they looked in the car, they found that there were three persons in the car, aged about 50 to 55 years. Deposition of PW-48 Sakhraj Kamabhai, examined at Exhibit – 132 goes to establish that he noticed three persons of aged about 50 to 55 years, putting fire to dead body. He stated to the extent that he knew the persons but not by the names. When accused were confronted such witnesses, they were definite in their say that none of these accused were seen by them at that moment. So, this evidence is also of no use to the prosecution and this link of the chain of circumstances could not be proved by the prosecution. The circumstance that accused No.1 thrown bag in the gutter could not be proved by prosecution through witness Balraj Amubhai, examined at Exhibit - 122.

18 Some circumstances are attempted to bring on record by the prosecution that the accused had some intimacy with the deceased and deceased was of particular character and was extorting money on behalf of someone else and was working as recovery agent. The accused had some dispute with the deceased in this regard and, therefore, the accused had decided to murder the deceased. However, there is no iota of evidence on record to prove this motive of the crime.

19 So far as the bloodstained clothes of the accused are

concerned, it is on record that PW-22 Raghuvirsinh Balvantsinh Rana, Exhibit – 93 stated that all the accused were present in the funeral ceremony and accused had dealt with the body of the deceased to the extent that their clothes were found bloodstained and, therefore, the finding of blood group on the clothes of the accused is not the circumstance, clinchingly incriminating the accused in the crime. The other articles i.e. shoes, slippers also, though blood was found, but group could not be ascertained. So far as, the funeral ceremony of the deceased is concerned, though the father of the deceased stated that he had not seen the accused in the said funeral ceremony, but appreciating the evidence of father and son together, it becomes crystal clear that the evidence of bloodstains on the clothes of the accused recovered during the investigation, is of no avail to the prosecution, as it could not be established by the prosecution beyond doubt that those bloodstains were on account of the incident and not account of the accused took part in funeral ceremony of the deceased. The evidence, therefore, in this respect is doubtful and no absolute reliance can be placed on this link of chain. So far as the bloodstains on Qualis car belonging to the father of the accused No.4 is concerned, PW-59 Manshukhbhai Ghelabhai, police witness, during patrolling attached the car at first instance. He made a report, which is placed at Exhibit – 59 to the Investigating Agency, but in the said report, he has not mentioned that the said car was having bloodstains. Not only this, but PW-60 Bhupatsinh

Mansinh admitted in his evidence that the said car was not sealed after it was attached. The vehicle, till was formally attached, was in police station for considerable time without sealing and locking the said car and, therefore, this evidence is not free from doubt that the car which was attached, of the father of the accused No.1 had bloodstains of the group of the deceased.

20 None except above circumstances, prosecution proposed to prove its case. It is established law that all the links of chain of the circumstances must be proved by the prosecution in such cases as to come to a definite conclusion that the crime is committed by the accused and accused only and by none else and that too, to the extent that the circumstances were such, which indicated inconsistency with the innocence of the accused. While as discussed above, in the present case, none of the link of the chain, could be proved beyond reasonable doubt. In the matter of **SHARAD BIRDHICHAND SARDA** vs. **STATE OF MAHARASHTRA, as reported in AIR 1984 SC 1622.** The Apex Court in paras 152, 153 and 157 observed as under :

> "The following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established.
>
> *(1) the circumstances from which the conclusion of guilt is to be drawn should be*

fully established. The circumstances concerned `must or should' and not `may be' established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the deceased, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstance should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved and;

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

A case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction."

21 Therefore, while it is imperative that circumstances from which the conclusion of guilt is to be drawn, should be fully established, in the present case, none of the circumstances, forming chain, could be established beyond doubt by the prosecution and, therefore, benefit of doubt must go in favour of he

accused.

22 We have scanned the reasons assigned by the Trial Court because this is an Appeal against the acquittal. The Trial Court has assigned the reasons, as stated above, that none of the circumstances could be proved by the prosecution beyond doubt as to establish a definite guilt of the accused. The scope of the appeal against the acquittal is well established by law. In the matter of **AJIT SAVANT MAJAGAVI vs. STATE OF KARNATAKA, as reported at (1997) 7 SCC 110** the Apex Court explained the scope of Appeals against the acquittal in para-16 as under:

> (1) *In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers, it possesses while hearing an appeal against the order of conviction.*
>
> (2) *The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.*

(3) *Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.*

(4) *In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.*

(5) *If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.*

(6) *The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the court especially in the witness box.*

(7) *The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.*

23 Thus, when we carefully scanned the reasons even after re-appreciation of the evidence, we do not find that the reasons assigned by the Trial Court for acquittal are perverse, manifestly erroneous, palpably wrong or demonstrably unsustainable. We therefore, do not find the conclusions arrived at by the Trial Court exceptionable and that the judgment and order impugned in this Appeal warrants no interference at all. After exhaustive strict scrutiny of the matter from every angle, in this acquittal appeal, we come to the following conclusion.

"Appeal stands dismissed."

(J. R. VORA, J.)

(SMT. ABHILASHA KUMARI, J.)

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